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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of:	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

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COMMENTS OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA")[1] respectfully submits its comments[2] regarding the proposals set forth in the Recommended Decision adopted by the Federal-State Joint Board[3] in the above-captioned proceeding as well as the Commission's related public notice.[4] PCIA supports many aspects of the Joint Board Recommendation. In several respects, however, the statutory requirements and the public interest require that the

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[1] PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

[2] In addition, the Paging and Narrowband PCS Alliance ("PNPA") and the Broadband PCS Alliance ("BPA") of PCIA are filing separate comments to address issues of particular concern to each of the Alliances.

[3] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision (Nov. 8, 1996) ("*Joint Board Recommendation*"); *Errata*, FCC 96J-3 (Nov. 19, 1996)..

[4] *Common Carrier Bureau Seeks Comment on Universal Service Recommended Decision*, DA 96-18911 (Nov. 18, 1996). The date for filing comments ws extended to December 19, 1996, by *Order*, CC Docket No. 96-45 (Dec. 11, 1996).

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Commission modify or reject proposed recommendations regarding the structure of the universal service support fund.

. INTRODUCTION AND SUMMARY

On November 7, 1996, pursuant to Section 254 of the Telecommunications Act of 1996 ("1996 Act"), the Federal-State Joint Board ("Joint Board") adopted its recommended decision regarding universal service. The Joint Board recommendations involved proposals regarding a broad range of issues relating to universal service, including: (1) universal service principles; (2) services eligible for support; (3) support mechanisms for rural, insular, and high cost areas; (4) support for low income customers; (5) affordability; (6) support for educational and health care institutions; (7) administration of support mechanisms; and (8) common line cost recovery.

PCIA has participated in this proceeding since its inception,[5] and has consistently maintained that the public interest will be best served by a universal service program that is equitably funded, narrowly targeted, and technologically neutral. PCIA continues to believe that adherence to these principles will result in a universal service program that provides the proper mix of telecommunications services to the proper number of Americans to meet the public policy goals of the 1996 Act without incurring excessive costs.

While Congress has made clear its objective of ensuring affordable telecommunications for all citizens, it is essential that this goal be achieved without undercutting competition in the telecommunications marketplace or at the expense of existing consumers. Thus, the total

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[5] *See* Comments of PCIA, CC Docket No. 96-45 (filed April 12, 1996); Reply Comments of PCIA, CC Docket No. 96-45 (filed May 7, 1996); Further Comments of PCIA, CC Docket No. 96-45 (filed Aug. 2, 1996); PCIA Supplemental Comments on "E-Rate" Proposal, CC Docket No. 96-45 (filed Oct. 30, 1996).

amount of the universal service fund must be carefully minimized. Otherwise, existing service subscribers may find themselves no longer able to afford service, and competition in the telecommunications industry will be reduced.

As one step in minimizing the support necessary is to use forward-looking economic costs to determine the amounts to be paid to telephone companies providing service in high cost areas. The Joint Board has wisely recommended the use of workshops to help build industry consensus to identify the appropriate cost proxy model to be applied in the universal service context. Other steps include: carefully applying the policy to ensure only the needy get support (such as providing support to a single connection to a customer's primary residence); adopting incentives for rural telephone companies to reduce costs as much as possible in those areas where they do not face competition; and exploring as promptly as possible mechanisms such as competitive bidding and vouchers that may successfully reduce universal service funding needs.

The Joint Board has exceeded the statutory boundaries with respect to its recommendations on funding the discounted installation of internal connections in schools and libraries. Section 254 provides for discounts only on telecommunications services; inside wiring clearly is not a telecommunications service. Thus, funding for inside wiring cannot be included within the universal service plan.

While the Commission is striving to achieve important goals, it cannot fund telecommunications for schools and libraries to the detriment of telecommunications carriers and the public. Accordingly, the Commission should look for ways to minimize the amount of funding required to provide these services schools and libraries, which may include reducing the services covered.

The Joint Board has sought to develop rules and policies that will promote technological neutrality. PCIA urges the Commission to continue such efforts. In particular, the Commission should emphatically recommend to states that service areas for universal service should be determined in all regions -- rural or not -- based on census blocks. Adoption of service areas of this size will help to ensure that the maximum number of telecommunications carriers are eligible to seek to provide service under the universal service policies.

Administration of the universal service fund has a number of critical aspects. The Commission must carefully design its formula for collecting contributions from telecommunications carriers. Indeed, the public interest would be best be served by collecting universal service funds through a separate line item on subscribers' bills. This will permit customers to assess directly the impact of the universal service plan, and form their own opinions about the appropriateness of the basic policy goals.

Finally, CMRS licensees should be required to contribute only to the federal universal service fund. Notwithstanding the Joint Board's conclusion, this outcome is not only consistent with but required by Section 332 of the Communications Act, as amended. The inseverability doctrine likewise supports requiring federal-only universal service contributions from CMRS providers..

I. TO MEET THE CONGRESSIONAL OBJECTIVE, THE COMMISSION'S UNIVERSAL SERVICE FUND MUST BE CAREFULLY TARGETED AND NARROWLY DRAWN

Section 254 of the Communications Act of 1934, as amended, provides the Commission with clear guidance that the support mechanisms used to promote universal service in this country must be sufficient to achieve that goal but not excessive. Specifically, Section 254(b)(1) directs that "[q]uality services should be available at just, reasonable, and affordable rates,"[6] while Section 254(b)(5) states that "[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."[7] As explained by the Joint Explanatory Statement of the Committee of Conference, Congress intended that "all universal service support should be clearly identified, . . . such support should be made explicit and should be sufficient to achieve the purposes of new section 254."[8]

The *Joint Board Recommendation* contains a number of recommendations that, if implemented by the Commission, are fully consistent with the statutory objectives. In addition, the Commission should explore or take additional steps to help reduce to a minimum the funds that must be expended in order to ensure affordable access to telecommunications services by U.S. residents.

A. Funding Universal Service t Levels in Excess of the Minimum Required Amounts Will Adversely Affect Individual Consumers and Telecommunications Competition

PCIA is concerned about the overall level of funding for the universal service support mechanisms because of the potential effects that excessively high amounts could have on the telecommunications marketplace. It is certainly a laudable goal to use funds to ensure that all Americans have access to certain basic telecommunications services. It is far more problematic, however, to assume that an unlimited amount of funds can be collected from telecommunications carriers *and* from the public in order to offer telecommunications services

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6 47 U.S.C. § 254(b)(1).

7 47 U.S.C. § 254(b)(5).

8 Joint Explanatory Statement of the Committee of Conference at 17, House Conf. Rep. No. 104-458, at 131 (1996), reprinted in 1996 U.S.C.C.A.N. 124, 143.

in high cost areas, to low income subscribers, to schools and libraries, and to rural health care providers at deeply discounted rates.[9] The simple fact is that imposing excessive charges on telecommunications carriers and members of the public will result in increased numbers of residential subscribers finding telecommunications service to be no longer affordable as well as potentially harming competition in the telecommunications marketplace. This outcome would appear to run counter to Chairman Hundt's recently articulated goal of keeping basic phone service low priced.[10]

Commissioner Chong, in her separate statement accompanying the *Joint Board Recommendation*, wisely struck a note of caution concerning the total size of the universal service fund. Commissioner Chong further highlighted the fact that "[t]wo competing interests must be balanced here: the advancement of universal service goals versus the impact that a huge fund may have on the bills of telecommunications users, particularly low income individuals."[11] Commissioner Schoenfelder also raised concerns about the potential effect of an unnecessarily large fund:

> I believe that a federal universal service fund that taxes consumers billions of dollars a year is not only inconsistent with Congressional intent, but could be extremely harmful nationwide to consumers. By supporting services at this level, average rates for all consumers may increase and it may harm competition

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[9] Telecommunications services in a competitive market will adhere to standard principles of economics. As the price rises, demand will fall; thus, requiring more support. This is counter to the goals of the 1994 Act.

[10] *See FCC Chairman Hundt Outlines 1997 FCC Agenda; Procompetitive, Deregulatory Framework Is Goal; Lists Major Issues, FCC Streamlining Efforts* (Dec. 12, 1996) (FCC News).

[11] *Joint Board Recommendation*, Separate Statement of FCC Commissioner Rachelle B. Chong at 14.

which is the principal objective of the law.[12]

The separate statements of Commissioners Chong and Schoenfelder make clear that funding universal support mechanisms at unnecessarily high levels can adversely affect members of the public, particularly low income users of telecommunications service. Rather than promoting widespread access and subscription to telecommunications service, the universal service support plan could instead increase the number of persons that drop telecommunications service simply because it has become too expensive to afford.[13] This potential outcome cannot be ignored in the Commission's consideration and adoption of final rules and policies to govern universal service support mechanisms.

Commissioner Schoenfelder also hints at the competitive risks posed by an excessively high universal service fund. The 1996 Act and many recent pronouncements by the Commission highlight the numerous public interest benefits of promoting maximum competition in the telecommunications industry. Yet, if telecommunications carriers must fund the universal service support mechanisms at excessively high levels, competition and the resulting benefits almost certainly will be diminished.[14] If telecommunications service costs too much, consumers will not buy the product or non-telecommunications alternatives, such as voice over Internet, whill take away subscribers.

Pricing considerations are particularly relevant to the ability of wireless carriers to compete in the telecommunications marketplace. Simply put, the majority of local exchange

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[12] *Joint Board Recommendation*, Separate Statement of Commissioner Laska Schoenfelder at 3.

[13] This also could increase the number of subscribers needing support.

[14] New entrants may also be imported differently than incumbents. This, of course, does not serve the public interest.

companies simply do not face the elasticity of demand concerns that are significant in the wireless industry. Any increase in wireless service rates will decrease the demand from consumers. For the most part, LECs generally do not face the same price-demand relationship in connection with the services they provide. Pricing considerations affect competition within the wireless industry as well as competition between wireless services and fixed local exchange service.[15] The Commission accordingly should strive to minimize the universal service fund in order not to undercut competition in the telecommunications industry.[16]

B. PCIA Agrees With the Joint Board That Utilizing Forward- Looking Costs and Mandating Technological Neutrality Will Encourage Efficiency and Reduce the Fund Size

The Joint Board concluded that, for high cost areas, "setting support at forward-looking economic cost levels will allow us to construct a universal service support mechanism that will preserve and advance universal service and encourage efficiency."[17] The Joint Board endorsed the use of a proxy model to calculate these forward-looking costs because proxy models "provide a competitively neutral estimate of the cost of providing supported services."[18] Finally, the Joint Board recommended that the Commission establish a nationwide benchmark that would be used to determine the amount to be funded in high cost areas to ensure the

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[15] This could be a substantial problem if some services were levied at different jurisdictional levels.

[16] Moreover, aside from numerous other benefits, competition is likely to be beneficial to ensuring universal access by Americans throughout the country to affordable telecommunications.

[17] *Joint Board Recommendation*, ¶ 276.

[18] *Id.*

availability of telecommunications services at affordable rates.[19]

PCIA agrees with the Joint Board's conclusion that utilizing forward looking costs, rather than embedded costs, will encourage greater efficiency by recipients of universal service funding and will play an important role in helping to minimize the funds to be collected to support universal service. In earlier pleadings, other commenters set forth a number of reasons why using embedded costs to calculate universal service subsidies is not in the public interest. First, embedded costs are likely to include many unnecessary costs incurred under rate of return regulation, and therefore will increase the size of the universal service fund beyond what is necessary to comply with the directives of Section 254.[20] Second, the use of embedded costs will create incentives for recipients of universal service funds to "game the system," by increasing their historical costs.[21] Such actions will also unnecessarily increase the size of the fund. Finally, as pointed out by the National Association of Regulatory Utility Commissioners ("NARUC"), local exchange carrier ("LEC") cost studies tend to overestimate the cost of universal service by assuming that all local loop costs are necessary to provide local service when local loops are in fact used to provide a variety of intra- and interstate services.[22]

PCIA further endorses the Joint Board's decision to create a technology-neutral model by recommending that, "[t]echnology assumed in the model should be the least-cost, most

Initial Comments of the National Association of Regulatory Utility Commissions, CC Docket

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19 *Id.*, ¶¶ 299, 309.

20 *See* Further Comments of MCI, CC Docket No. 96-45, at 12 (filed Aug. 2, 1996); Further Comments of Time Warner, CC Docket No. 96-45, at 32-33 (filed Aug. 2, 1996).

21 *See* Further Comments of AirTouch, CC Docket No. 96-45, at 20-21 (filed Aug. 2, 1996).

No. 96-45, at 13-15 (filed April 12, 1996).efficient and reasonable technology for providing the supported services that is currently available for purchase . . . ."[23] As previously stated, PCIA believes that wireless technologies can often provide sparsely populated and ruggedly contoured areas of the country with less expensive access to telecommunications than wireline technologies. Therefore, by developing a cost model that takes into account the unique capabilities of wireless technologies, the Commission will ensure that the universal service fund is no larger than necessary.

The Joint Board concluded that it could not recommend to the Commission any of the cost proxy models that had been submitted in this docket.[24] The Joint Board therefore suggested that "the Commission continue to work with the state commissions to develop an adequate proxy model that can be used to determine the cost of providing supported services in a particular geographic area, and in calculating what support, if any, a carrier should receive for providing services designated for universal service support."[25] PCIA endorses the Joint Board's expectation that "the state and federal staffs will work collaboratively to conduct workshops with interested parties on the issues associated with the proxy models."[26]

The Commission has recently announced the scheduling of workshops on January 14 and 15, 1997.[27] It appears that the Federal-State Joint Board staff has sought to design the

(..continued)

[22] Initial Comments of the National Association of Regulatory Utility Commissions, CC Docket No. 96-45, at 13-15 (filed April 12, 1996).

[23] *Joint Board Recommendation*, ¶ 277.

[24] *Id.*, ¶ 268.

[25] *Id.*

[26] *Id.*, ¶ 269.

[27] *Federal-State Joint Board on Universal Service: Staff To Hold Workshops on Proxy*

workshops in order to ensure widespread participation by all interested telecommunications providers as well as other entities. Given the format of the workshops, however, it is unclear how much give-and-take discussion will occur -- and such discussion appears to be essential to building consensus concerning a particular cost proxy model. PCIA thus urges the Commission and the Federal-State Joint Board staff to be prepared to hold additional workshops subsequent to the mid-January dates in which open discussion can occur in order to facilitate the achievement of consensus. Obviously, the more open the process is, the more likely it is that the Commission, with assistance from state staffs, will be able to decide on the most effective and accurate model.

C. PCIA Endorses the Joint Board's Recommendation To Support A Single Connection to a Customer's Primary Residence

The Joint Board has concluded that "support for designated services provided to residential customers should be limited to those services carried on a single connection to a subscriber's principal residence."[28] The Joint Board declined to provide universal service support for second connections into a residence or for second homes. This policy recommendation mirrors some of the limitations contained in existing universal service fund arrangements. PCIA endorses adoption of these recommendations, since they will help to target universal service support funds to those entities that are in actual need of such support.

Although the objective is commendable and appropriate, PCIA is concerned about the practical implementation of this policy, particularly in high cost areas. The *Joint Board Recommendation* acknowledges concerns reflected in the record about the difficulty in

(..continued)
Cost Models on January 14-15, 1997, CC Docket No. 96-45, DA 96-2091 (Dec. 12, 1996) (FCC Public Notice).

[28] *Joint Board Recommendation,* ¶ 89.

determining whether an additional phone connection to a house is in fact a second connection or whether it is the first connection for a second household sharing the same home.[29] The Joint Board concluded that this difficulty can be addressed by carriers relying on subscriber billing information.[30] It seems, however, that a household could easily install a second line under a second name, and the serving telephone company may not be able to detect that the line should not be supported under the universal service support policies. Similarly, there appears to be no readily apparent manner in which a telecommunications provider can determine that a home is a second residence for which universal service support funding is not appropriate.

These concerns do not in any way undercut PCIA's support for the Joint Board's recommendation. These practical implementation problems, however, suggest that the Commission must seek to ensure that the policy of providing universal service support for only the first connection to a primary residence is implemented to the fullest extent possible without leading to the imposition of excessive administrative costs.

D. The Universal Service Fund Rules Should Be Designed To Reduce Costs in Areas Where No Competition Exists

In supporting the use of forward looking economic costs to determine the level of support to be provided to high cost areas, the Joint Board noted that this methodology would rely on the costs of an efficient carrier and that the costs of inefficient provision of service should not be the basis for calculating support.[31] The Joint Board concluded that forward

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[29] *See id.*

[30] *Id.*

[31] *Id.*, ¶ 270.

looking economic costs would provide "the correct signals for entry, investment, and innovation in the long-run."[32] In this regard, the Joint Board pointed out that, "[w]here embedded costs are above forward-looking costs, support of embedded costs would direct carriers to make inefficient investments that may not be financially viable when there is competitive entry."[33]

PCIA urges the Commission to adopt all policies necessary to provide carriers not facing any competition with maximum incentive to minimize their costs. Clearly, if the Commission retained embedded costs as the basis for determining universal service support payments, carriers not confronting competition would not have any reason to seek to reduce their costs. Thus, any plan adopted by the Commission for transitioning to cost proxy models must take this concern into account.

The Joint Board has recommended, in the case of rural carriers, a six year transition period to the full use of cost proxy models.[34] For the first three years, high cost assistance, DEM weighting, and LTS benefits for such carriers would be based on historical per line amounts.[35] Because the payments would be frozen based on historical costs, it appears that carriers covered by the transition plan would be limited in their ability to increase embedded costs, and thus increase the universal service fund amount, in those areas where competition is not present. Nonetheless, the final rules adopted by the Commission must ensure that there is

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[32] *Id.*, ¶ 275.

[33] *Id.*

[34] *See id.*, ¶ 289.

[35] *Id.*, ¶ 283.

no recovery of excessive embedded costs during the transition period to full reliance on a cost proxy model.

While there may be valid reasons for the adoption of a transition plan structured as proposed by the Joint Board, the Commission should also strive to build in incentives for rural carriers -- many of whom do not face competition -- to implement immediately cost-saving measures. This will be an important step in helping to control the overall size of the universal service fund.

E. In Addition to Traditional Types of Universal Service Support Mechanisms, PCIA Urges the Commission To Explore All Other Available Tools To Meet Universal Service Funding Needs

The universal service support mechanisms should be adequate to ensure that consumers have access to affordable telecommunications services, while at the same time being designed to reduce universal service costs, promote competition in the telecommunications industry, and maintain technological neutrality. PCIA agrees with the Joint Board that a competitive bidding system "could have significant advantages over other mechanisms used to determine the level of universal service support."[36] Further, as suggested by the Joint Board, the Commission should actively explore the possibility of using competitive bidding in the universal service context. It seems likely that competitive bidding policies can be adopted that will promote consumer choice, maintain technological neutrality, and provide incentives for increased competition in the service areas.

Portability of funding for universal service beneficiaries is also found in developing a system to permit the use of vouchers for low income subscribers. Vouchers serve as a tool in ensuring that low income subscribers obtain access to the services they need at the most cost-

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[36] *Id.*, ¶ 341.

effective level, while concurrently ensuring that all interested telecommunications carriers have an opportunity to provide service to all segments of a community. By opening up the process to participation by a maximum number of carriers, the use of vouchers will help to promote competition beneficial generally as well as in the context of the universal service fund. Finally, a properly tailored system of vouchers could help to limit the total amount of the universal service fund.

Because of the potential benefits of competitive bidding and vouchers, PCIA urges the Commission to explore as promptly as possible the implementation of such procedures. Proposals contained in the comments submitted to the Joint Board could serve as a starting point to examine and adopt the optimal features of competitive bidding and vouchers for distributing universal service funds and ensuring that members of the public obtain telephone service at reasonable prices.

II. THE JOINT BOARD'S RECOMMENDATIONS CONCERNING THE SCHOOLS AND LIBRARIES PROVISIONS EXCEED THE STATUTORY AUTHORIZATION AND WOULD DISSERVE THE PUBLIC INTEREST

The Joint Board has recommended that "all eligible schools and libraries may receive discounts of between 20 and 90 percent on all telecommunications services, Internet access, and internal connections, subject to a $2.25 billion annual cap."[37] This discount is not to be limited to the "core" telecommunications services defined under Section 254(c)(1); instead, the Joint Board urges the Commission to "provide[] schools and libraries with the maximum flexibility to purchase whatever package of telecommunications services they believe will meet

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[37] *Joint Board Recommendation*, ¶ 440.

their telecommunications service needs most effectively and efficiently."[38] The Joint Board further concluded that the Commission should adopt a rule that "makes available discounts on all telecommunications services pursuant to sections 254(h)(1)(B) and 254(h)(2)(A),"[39] to ensure that schools and libraries may obtain discounts on all telecommunications services, whether provided by a telecommunications carrier or other service provider.

The Joint Board further recommended that "the Commission provide discounts for Internet access pursuant to section 254(h)(2)," which would "apply to basic conduit, *i.e.*, non-content, access from the school or library to the backbone Internet network."[40] Included in this access would be the subscription fee paid to the information service provider ("ISP").[41] Under the Joint Board's plan, "schools and libraries . . . would be permitted to apply the discount to the entire `basic' charge by an ISP that bundled access to some minimal amount of content, but only under those circumstances in which the ISP basic subscription charge represented the most cost-effective method for the school or library to secure non-content conduit access to the Internet."[42]

The Joint Board has concluded that the Commission should "expressly acknowledge

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[38] *Id.*, ¶ 458.

[39] *Id.*, ¶ 460.

[40] *Id.*, ¶ 463.

[41] *Id.*

[42] *Id.*, ¶ 463.

that schools and libraries may receive discounts on charges for internal connections . . . ."[43] In finding that discounts on such internal connections are consistent with Section 254(h)(1)(B), the Joint Board has decided that "the *installation and maintenance* of [the physical facilities that provide intraschool and intralibrary connections] are services."[44] The Joint Board also concluded that Section 254(h)(2)A) provides the Commission with authority to order discounts for internal connections.[45] "Internal connections" would be defined to include items such as routers, hubs, network file servers, and wireless LANs, but would not include personal computers.[46]

PCIA believes that the Joint Board's recommendations for the funding of discounts on telecommunications services provided to schools and libraries exceeds the plain statutory authority granted the Commission under Section 254(h) of the Communications Act, as amended. If the Commission adopts the Joint Board recommendations, they could have serious harmful effects for telecommunications consumers, the wireless industry, and the telecommunications marketplace generally. While the Joint Board has sought to effectuate laudable goals in ensuring widespread access by schools and libraries to advanced telecommunications, the statutory objectives and the public interest require the Commission to define the schools and libraries support mechanism more narrowly and to reduce the amount to

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[43] *Id.*, ¶ 473.

[44] *Id.*, ¶ 474 (emphasis in original).

[45] *Id.*, ¶ 476.

[46] *Id.*, ¶ 477.

be contributed by individual carriers.

It is important for the Commission to take into account the fact that the primary beneficiaries of the schools and libraries provisions are *information service providers*. Despite this fact, however, ISPs are not required to contribute to the schools and libraries fund (or any universal services fund). Rather, only telecommunications service providers will supply the necessary funds. Ironically, in the case of some CMRS providers, they will be required to pay into the fund but will not be eligible to receive payments. The equities involving the financial supporters and the beneficiaries of the schools and libraries provisions under the Joint Board's proposals are troubling when examined in light of the public interest.

A. Internal Connections Are Not Encompassed Within the Discounts Specified by Section 254(h)

Notwithstanding the Joint Board's line of reasoning, internal connections simply are not included within the scope of services for which discounts are to be provided to schools and libraries under either Section 254(h)(1)(B) or Section 254(h)(2)(A). First, Section 254(h)(1)(B) is quite clear in its references only to "services":

> All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its *services* that are within the definition of *universal service* under subsection(c)(3), provide such *services* to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar *services* to other parties. The discount shall be an amount that the Commission, with respect to interstate *services*, and the States, with respect to intrastate *services*, determine is appropriate and necessary to ensure affordable access to and use of such *services* by such entities. A telecommunications carrier providing *service* under this paragraph shall-- (i) have an amount equal to the amount of the discount treated as an offset to its obligation to contribute to the mechanisms to preserve and advance universal service, or (ii) notwithstanding the provisions of subsection (e) of this section, receive reimbursement utilizing the support mechanisms to preserve and advance universal service.[47]

[47] 47 U.S.C. § 254(h)(1)(B) (emphasis added).

The definition of "universal service" in turn indicates that it is "an evolving level of *telecommunications services* . . . ."[48] "Telecommunications service" is defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."[49] Finally, "telecommunications" is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[50] Thus, Section 254(h)(1)(B) contemplates the granting of discounts only in connection with the provision of telecommunications services by telecommunications providers.

Second, Section 254(h)(2)(A) reinforces the limitation on the provision of discounts for telecommunications services for schools and libraries. Like Section 254(h)(1)(B), this section also discusses services:

> The Commission shall establish competitively neutral rules . . . to enhance, to the extent technically feasible and economically reasonable, access to advanced *telecommunications* and information *services* for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries . . . .[51]

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[48] 47 U.S.C. § 254(c)(1) (emphasis added). *See also* 47 U.S.C. § 254(c)(3) (which authorizes the Commission to "designate additional *services* for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection (h)" (emphasis added)).

[49] 47 U.S.C. § 153(51).

[50] 47 U.S.C. § 153(48).

[51] 47 U.S.C. § 254(h)(2)(A) (emphasis added).

This section directs the Commission to establish competitively neutral rules governing use of, *inter alia*, telecommunications services. The use of the term "access" does not change the fundamental nature of the limitation on the Commission's authority. Moreover, even if the Joint Board were correct in its interpretation of Section 254(h)(2)(A), nothing in this section provides the Commission with authority to grant discounts to schools or libraries in connection with inside wiring or internal connections.

Although the Joint Board has tried to demonstrate that the installation and maintenance of inside wiring or internal connections is a telecommunications service, a reasonable reading of the statute's own definitions as well as the Commission's policies on inside wiring make clear that the Joint Board's analysis is faulty. Initially, there is no way that inside wiring/internal connections, the installation of inside wiring/internal connections, or the maintenance of inside wiring/internal connections can be considered to constitute the *transmission* of information -- central to the 1996 Act's definition of "telecommunications." Since Section 254(h)(1)(B) is limited to discounts for telecommunications service, and since inside wiring and internal connections do not fall within the definition of such service, they cannot be the subject of discounts.

This conclusion is reinforced by the Commission's existing policies on inside wiring, which generally refers "to the telephone wires within a customer's home or place of business that are on the customer's side of the point of intersection between the telephone company's communications facilities and the customer's facilities."[52] The Commission has explicitly ruled that the installation and maintenance of inside wiring are *not* common carrier

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[52] *National Association of Regulatory Utility Commissioners v. FCC*, 880 F.2d 422, 425 (D.C. Cir. 1989) (*NARUC v. FCC*").

communications services.[53] While there is no exact comparability between the concept of common carrier communications services in the Commission's precedent and the definition of "telecommunications service" in the statute, there is clearly a large degree of parallelism. The Commission's prior interpretations concerning the nature of "inside wiring" cannot now be disregarded by the Joint Board or by the Commission itself.[54] The only reasonable conclusion based on a fair reading of the statutory sections is that universal service funds may not be used to support discounts to schools and libraries to cover inside wiring and internal connections.[55]

B. The Joint Board's Improper Inclusion of Internal Connections Results in Excessive Funding Requirements and Should be Reversed

The record suggests that the improper addition of internal connections to be funded by the universal service support mechanisms involving schools and libraries substantially increases the amount of the fund. As discussed in Section II.A. above, excessively large funds to support universal service will adversely affect competition in the telecommunications marketplace generally, the ability of the wireless industry to compete, the ability of the wireless industry to continue to serve as an alternative to certain fixed landline services, and the welfare of consumers. The more the Commission increases the amounts to be paid by the

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[53] *See Detariffing the Installation and Maintenance of Inside Wiring*, 51 Fed. Reg. 8498 1 FCC Rcd 1190, 1192 (1986) (Memorandum Opinion and Order); 3 FCC Rcd 1719, 1721 (1988) (Memorandum Opinion and Order).

[54] The Joint Board's references to statements contained in *NARUC v. FCC, supra*, to support its conclusions about the nature of inside wiring/internal connections are nothing more than game playing with words. Indeed, the Joint Board ignores the fact that the court explicitly noted that the Commission had determined that inside wiring should not be regulated as a common carrier service. *See* 880 F.2d at 427.

[55] To the extent the Joint Board is worried about competitive concerns resulting from the use of different technologies, *see Joint Board Recommendation*, ¶ 482, there are far more direct and more effective ways to address that concern without distorting the language of the statute or Commission precedent.

universal service funds to support schools and libraries, as well as in furtherance of other universal service goals, the more pronounced will be the adverse effects stemming from that action.

In order to meet the statutory goals with a more reasonably priced fund, the Commission needs to revisit the nature of the services to be provided to schools and libraries as well as the discount schedule. The Commission should strive to ensure that schools and libraries have access to needed telecommunications services, without expanding the money pool beyond its limit. In connection with that effort, PCIA suggests that the Commission reduce the cap on annual expenditures in support of the schools and libraries provisions. The Joint Board's and the Commission's goals may be laudable with respect to the schools and libraries, but that does not outweigh the potential danger of undermining the competitive telecommunications marketplace that now exists and more and more subscribers to cancel their telecommunications service as rates continue to climb in order to meet the universal service funding requirements.[56]

III. ELIGIBILITY TO RECEIVE UNIVERSAL SERVICE SUPPORT FUNDS SHOULD BE APPLIED IN A TECHNOLOGICALLY NEUTRAL MANNER

The *Joint Board Recommendation* reflects a concerted effort to ensure that any requirements defining the ability of any entity to receive universal service support funds are

[56] The Commission must take a similar, conservative approach in addressing the telecommunications needs of rural health care providers. At this time, the Joint Board has recommended that the Commission obtain additional information on the telecommunications services needed by rural health care providers and the costs of such services. *Joint Board Recommendation*, ¶ 632. The Commission must exercise care so as not to provide support for an ideal rural health care telecommunications standard at funding levels that cannot be reasonably supported by the telecommunications industry and the public. Implementation of a carefully defined fund for supporting the telecommunications needs for rural health care providers can be accomplished consistent with the statutory goals.

designed so as not to exclude parties on the basis merely of technology. PCIA endorses the Joint Board's efforts in this regard, because they reflect an acknowledgement that the telecommunications marketplace is rapidly changing, along with a recognition of the rapid development of technology. Clearly, it is in the best interests of the public as well as the goal of minimization of the universal service fund levels to ensure that technologies and carriers that ultimately may be more cost-effective have an opportunity to meet the universal service needs of segments of this country at the appropriate time. PCIA accordingly urges the Commission to endorse the technological and competitive neutrality reflected in the Joint Board's proposals.

In this regard, PCIA urges the Commission to take an additional step to promote competition as well as technology-neutral opportunities for telecommunications carriers to serve the public pursuant to the universal service standards. Specifically, PCIA urges the Commission to define universal service areas as much smaller regions than those proposed by the Joint Board.

Section 214(e)(5) defines "service area" as:

> [A] geographic area established by a State commission for the purpose of determining universal service area obligations and support mechanisms. In the case of an area served by a rural telephone company, `service area' means such company's `study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under Section 410(c), establish a different definition of service area for such company.[57]

The Joint Board recommends that "the Commission urge the states to designate service areas . . . that are of sufficiently small geographic scope to permit efficient targeting of high

[57] 47 U.S.C. § 214(e)(5).

cost support and to facilitate entry by competing carriers."[58] This recommendation was based in part on the fact that unreasonably large service areas unfairly favored incumbent service providers. Specifically, the Joint Board posited that new entrants are less likely to be able to muster the greater startup costs necessary to initiate service to large areas than they are the lesser costs required to serve small areas.[59] Further, the Joint Board pointed out that simply overlaying universal service areas over incumbent landline service areas would unfairly discriminate against wireless providers, who utilize different service areas.[60]

PCIA agrees with the Joint Board's recommendation that service areas should not be unreasonably large, and with its pro-competitive rationale for making this recommendation. As pointed out by the Joint Board, smaller service areas will encourage a greater number of carriers to compete for the opportunity to provide service to rural, insular, high cost, and low income areas. Such increased competition will provide the people living in these areas with a greater choice of high quality, low priced services, consistent with Section 254(b)(1)'s goal of providing all Americans with "quality services" at "just, reasonable, and affordable rates." Further, among these new competitors should be a number of wireless providers that might be able to serve rural and sparsely populated areas more economically than wireline carriers due to the lesser cost of wireless infrastructure under such circumstances.

Despite articulating these benefits for small service areas, the Joint Board nonetheless recommends that "the Commission retain the current study areas of rural telephone companies

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[58] *Joint Board Recommendation*, ¶ 175.

[59] *Id.*

[60] *Id.*

as the service areas for such companies."[61] The effect of adopting this recommendation is to consign the subscribers of many rural telephone companies to receiving the same telephone service from their existing supplier for years into the future. While actual exchange areas may be much smaller, existing study areas for rural telephone companies may be very large. Retaining the study areas as the basis for designating universal service providers could effectively foreclose entry by new telecommunications providers, such as wireless carriers. The Joint Board provides a competitive preference to rural telephone companies that is neither needed nor justified.

PCIA accordingly urges the Commission to emphatically recommend that the states adopt service areas for the purpose of meeting universal service goals based on census blocks, whether within a rural telephone company's service area or not. Use of census blocks will promote the broadest opportunities for diverse carriers to participate as universal service fund recipients for the very reasons suggested by the Joint Board itself. Indeed, there seems to be no compelling reason why the benefits identified by the Joint Board for small service areas in non-rural telephone company areas are not equally applicable to rural telephone company areas.

Finally, PCIA concurs with the Joint Board's conclusion that smaller service areas will promote a more narrowly targeted, and therefore a smaller universal service fund.[62] As pointed out by Sprint earlier in this proceeding, the larger a service area, the more likely that cost averaging will occur, and low cost areas within the large service area will unfairly and

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[61] *Id.*, ¶ 172.

[62] *Id.*